U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34835740

Date: NOV. 01, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (National Interest Waiver)

The Petitioner, a university professor and administrator, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this classification. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding the Petitioner did not establish that he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Matter of Chawathe, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's*, Inc., 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act.

Once a petitioner demonstrates eligibility for the underlying classification, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so. While neither the statute nor the pertinent regulations define the term "national interest," Matter of Dhanasar, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework

for adjudicating national interest waiver petitions. Dhanasar states USCIS may, as matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

Id.

II. ANALYSIS

The Director found that the Petitioner qualifies for the underlying EB-2 classification as a member of the professions holding an advanced degree.[2] We agree with the Director's determination.

The issue on appeal is whether the Petitioner established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The Director determined that while the Petitioner demonstrated the proposed endeavor has substantial merit, he did not establish that the proposed endeavor is of national importance, as required by the first prong of the Dhanasar analytical framework. The Director further determined that the Petitioner did not establish that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of a labor certification under *Dhanasar's* third prong.[3] Upon de novo review, we agree with the Director's determination that the Petitioner did not demonstrate that a waiver of the labor certification would be in the national interest.[4]

The first prong of the Dhanasar analytical framework, substantial merit and national importance, focuses on the specific endeavor that a petitioner proposes to undertake. The endeavor's merit may be demonstrated in a range of areas, such as business, entrepreneurialism, science, technology, culture, health, or education. In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." Id.

The Petitioner proposes to establish a higher education consulting business for which he would be its chief executive officer. The Petitioner indicates that his business would promote value-based education to higher education institutions and accreditation agencies with the goal of increasing

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[1] See Flores v. Garland, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Third, Ninth, Eleventh, and D.C. Circuit Courts in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

[2] To demonstrate he is an advanced degree professional, the Petitioner submitted his certificates from [redacted] in Nigeria for a bachelor of arts in political science, a master of science in political science, and a Ph.D. in social sciences, and an academic evaluation. The record demonstrates that he attained the foreign equivalent to a U.S. doctorate. See 8 C.F.R. § 204.5(k)(3).

[3] The Director did not indicate whether the Petitioner is well-positioned to advance the proposed endeavor under *Dhanasar's* second prong. Since the Petitioner's eligibility under *Dhanasar's* first prong is the dispositive issue for this appeal, we will reserve the Petitioner's eligibility under the second Dhanasar prong. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) (noting that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); see also Matter of L-A-C-, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

[4] While we may not discuss every document submitted, we have reviewed and considered each one.

student enrollment and retention, particularly in underserved communities. The business' services would include curriculum enhancements; community engagement programs; and leadership and quality assurance training. The business would utilize "cutting-edge technology, data analytics, and strategic partnerships to address the unique challenges faced by communities in achieving higher enrollment and completion rates in colleges." To attain these results, the business' core service will be utilizing its proprietary [redacted] algorithm, which the Petitioner developed to analyze community data, identify motivational factors for education within rural communities, and customize intervention strategies. We agree with the Director that the Petitioner's proposed endeavor has substantial merit.

Even though the Petitioner's proposed endeavor has substantial merit, the Director determined that the Petitioner did not establish that his proposed endeavor is of national importance. The Director found that the Petitioner did not demonstrate his proposed endeavor would extend beyond his business and clients to have the claimed potential prospective impact on his field, an industry, or the economy more broadly. The Director further determined that the Petitioner did not show how his work with his consulting business has significant potential to employ U.S. workers; will offer substantial positive economic effects, particularly in the claimed underserved areas; or will broadly enhance social welfare, or cultural or artistic enrichment, as contemplated by Dhanasar.

On appeal, the Petitioner contends the evidence shows his endeavor would have "a significant impact in making the [United States] continue to retain its global leadership in education as a platform for human development." In addition, he claims the evidence submitted shows his business will generate employment opportunities and economic benefits. Upon de novo review, we find the Petitioner did not demonstrate that his proposed endeavor satisfies the national importance element of *Dhanasar's* first prong, as discussed below.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of his work. Id. Here, the Petitioner has not sufficiently documented that his proposed consulting business has the potential to have the asserted broad impact on his field, or the claimed economic or social welfare impacts to the United States and the underserved communities his business intends to serve.

The Petitioner's statements and business plan stress the importance of higher education to the U.S. economy and social welfare. Because the United States is experiencing student disinterest in higher education, the Petitioner claims higher education institutions have experienced a significant decline in student enrollment, retention, and completion. He maintains his consulting business would make a meaningful and lasting impact on national education and prosperity by increasing enrollment and completion rates and improving educational outcomes, especially in disadvantaged communities. Such increase in higher education outcome rates would provide better employment opportunities and income to individuals in the underserved communities. In addition, he claims such economic benefits to underserved communities would reduce the need for U.S. government social welfare programs, attract investments for new businesses, promote upward economic and social mobility opportunities for diverse individuals, contribute to U.S. global competitiveness, contribute to better health, and advance innovation and technology. His business plan indicates his consulting business will have other substantial positive economic effects, such as generating employment, wages, and tax revenue. To support his claims, the business plan discusses the Petitioner's investment into the business; a

market analysis of the U.S. higher education industry; the business' consulting services and operational plans; and the business' projected marketing, personnel, and financial forecasts.

However, the Petitioner has not supported his assertions with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. at 376. The standard of proof in this proceeding is a preponderance of the evidence, meaning that a petitioner must show that what is claimed is "more likely than not" or "probably" true. Id. at 375-76. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. Id.; Matter of E-M-, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

Here, the Petitioner has not offered sufficient information and evidence supporting the claims in the business plan that his business' activities stand to provide broad impact to his field, or substantial economic or social welfare benefits to underserved communities or the United States. For instance, the business plan projects that in five years the business will hire 139 direct employees and generate revenue of over $38 million. However, the record does not sufficiently detail the basis for its financial and staffing projections, or adequately explain how these projections will be realized. Even if we were to assume everything the Petitioner claims will happen, the record lacks evidence showing that creating 139 jobs and generating over $38 million in revenue over a five-year period rises to the level of national importance. Also, without sufficient documentary evidence that his proposed job duties as the owner and chief executive officer of his higher education consulting business would impact the higher education field more broadly, rather than benefiting his business and his clients, the Petitioner has not demonstrated by a preponderance of the evidence that his proposed endeavor is of national importance.

Moreover, the record does not show that the business' core service, utilizing its proprietary [redacted] algorithm, would provide the claimed innovations in the field of higher education. The Petitioner explains his [redacted] algorithm "leverages data analytics, machine learning, and artificial intelligence to gather, analyze, and interpret data from various sources, enabling [the Petitioner's business] to gain deep insights into each community's unique characteristics, challenges, and aspirations." The Petitioner maintains his [redacted] algorithm will collect and analyze data affecting college education interests and enrollment so that higher education institutions and businesses can utilize the data for strategic planning. For instance, he claims higher education institutions could predict enrollment, target recruitment efforts, and develop policies and funding allocations based on its [redacted] algorithm providing the institutions with community-level interests.

The Petitioner's statements, however, are not sufficient to demonstrate his proposed business' [redacted] algorithm has the potential to provide the claimed results, including the broader impact on the higher education field, and the economic and social welfare benefits in a manner commensurate with national importance. The Petitioner must support his assertions with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. at 376. Although the Petitioner expresses his desire to contribute to the higher education field using his [redacted] algorithm technology, he has not provided independent and objective evidence to support his statements.

Next, the Petitioner relies on recommendation letters from his colleagues to show his previous work as a university professor and administrator has benefited his employers, their students, and the higher education industry. The letters mainly attest to the Petitioner's professional competencies, his dedication to higher education, and his work at academic institutions in Nigeria, including the Petitioner's leadership positions at universities; his curriculum and program development work; his review of peer work; and his development of quality support system programs. Some letters express that his previous academic work led to academic institutions having increased student enrollment and retention.

The Petitioner's reliance on his professional knowledge and experience to establish the national importance of his proposed endeavor is misplaced. The letters do not show the national importance of his proposed endeavor, but instead relate to the second prong of the Dhanasar framework. D*hanasar's* second prong "shifts the focus from the proposed endeavor to the foreign national." Matter of Dhanasar, 26 I&N Dec. at 890. While a few recommendation letters from his colleagues working at U.S. universities generally mention that the Petitioner's consultancy business would help U.S. academic institutions improve student retention and enrollment in the United States, the letters lack details of the Petitioner's endeavor and mainly describe his professional experience and how his endeavor is of importance based on his experience. We acknowledge that the Petitioner provided academic teaching and administration services for his previous university employers and their students, but the Petitioner has not offered sufficient information and evidence based on these recommendation letters to demonstrate the prospective impact of his proposed endeavor rises to the level of national importance.

With the appeal, the Petitioner offers new evidence to show his eligibility for the national interest waiver, including updated and new recommendation letters from university professors to demonstrate the national importance of his endeavor. Like the initially submitted recommendation letters, the updated and new letters explain the importance of higher education to the local and national economies and social welfare; the trending lack of interest in higher education; and the challenges facing universities to increase student enrollment and retention. After assessing the Petitioner's proposed value-based education consulting work and his [redacted] algorithm, the letters indicate that the endeavor has the potential to impact higher education by identifying ways to promote student interest in higher education. By doing so, the letters maintain that an increase in students completing higher education would create more jobs and economic prosperity, particularly in underserved communities. However, because the Petitioner was put on notice and given a reasonable opportunity to provide this evidence in response to a request for evidence, we will not consider this new evidence for the first time on appeal. See Matter of Soriano, 19 I&N Dec. 764, 766 (BIA 1988) (declining to consider new evidence submitted on appeal because "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial").[5]

[5] We note that were we to consider the updated and new recommendation letters, they do not sufficiently detail the endeavor and how it has the potential to have the claimed broader impact in the higher education field, or the claimed economic and societal welfare impact, that rises to the level of national importance. The letters mainly provide generalized statements about the Petitioner's endeavor and reiterate statements in the business plan. Also, while the updated and new letters claim that the intended consulting business has the potential to have a broader impact in the higher education field, an economic impact in underserved communities in the United States, and a social welfare impact on the United States, they do not provide an explanation or details of the potential extent of the endeavor's claimed impact to show that it rises to the level of national importance.

Last, the Petitioner maintains that his endeavor aligns with matters that the government has described as having national importance or is the subject of national initiatives. The Petitioner contends his endeavor is aligned with U.S. Department of Education initiatives which prioritize fixing the student loan system and increasing college student enrollment and completion, particularly in underserved communities. In addition, the Petitioner claims his business would align with U.S. government initiatives promoting access to diverse education resources and support for inclusive institutions.

Although the Petitioner references U.S. Department of Education policies, he did not submit supporting evidence of these policies. Moreover, the importance of the U.S. government policy initiatives, such as U.S. Department of Education priorities, is not in dispute, but their overall significance does not establish the national importance of the Petitioner's proposed endeavor in particular. Working in or establishing a business in an important field is insufficient on its own to establish the national importance of the proposed endeavor. Instead, we focus on "the specific endeavor that the foreign national proposes to undertake" and consider the endeavor's "potential prospective impact." Matter of Dhanasar, 26 I&N Dec. at 889. The Petitioner makes general statements about his business aligning with national initiatives but does not quantify his proposed endeavor's expected impact in the identified areas of concern, or provide objective, probative evidence to support his contentions. Although increasing college student enrollment and completion in underserved communities may be nationally important issues, the Petitioner has not demonstrated the potential prospective impact of his specific endeavor to such nationally important matters.

Based on the above, the Petitioner has not demonstrated that his proposed endeavor has the potential to extend beyond his business and his future clients to impact his field, the U.S. economy, social welfare, or nationally important matters more broadly at a level commensurate with national importance. Beyond general assertions, he has not demonstrated that the work he proposes to undertake as the owner of his proposed consulting business offers the claimed innovations that contribute to advancements in his industry or otherwise has broader implications for his field. In addition, the economic and social welfare benefits that the Petitioner claims depend on numerous factors, and he did not offer a sufficiently direct evidentiary tie between his consulting work and the claimed potential economic and social welfare benefits.

Because the documentation in the record does not sufficiently establish the national importance of the Petitioner's proposed endeavor as required by the first prong of the Dhanasar precedent decision, he has not demonstrated eligibility for a national interest waiver. This identified basis for dismissal is dispositive of the Petitioner's appeal, and therefore we decline to reach and hereby reserve the Petitioner's appellate arguments and his eligibility under the second and third Dhanasar prongs. See INS v. Bagamasbad, 429 U.S. at 25; see also Matter of L-A-C-, 26 I&N Dec. at 526 n.7.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the Dhanasar analytical framework, he has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.